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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

VICENTE FLORES,

Plaintiff,

v.

NANCY A. BERRYHILL, Acting  
Commissioner of Social Security,

Defendant.

Case No. CV 17-0112-RAO

**CORRECTED MEMORANDUM  
OPINION AND ORDER**

Plaintiff Vicente Flores (“Plaintiff”) challenges the Commissioner’s denial of his application for disability insurance benefits (“DIB”). Plaintiff raises one claim in his challenge -- that the ALJ erred by not articulating clear and convincing reasons for discounting his subjective symptoms. After examining the ALJ’s decision addressing Plaintiff’s symptoms, the Court cannot discern on what ground(s) the ALJ discounted Plaintiff’s symptom testimony and thus reversal of the Commissioner’s decision is warranted. For the reasons stated below, the decision of the Commissioner is REVERSED and the action is REMANDED for further proceedings consistent with this Order.

1           **1. The ALJ Erred in Discounting Plaintiff’s Testimony Regarding His**  
2           **Subjective Symptoms**

3           The Court’s review of the ALJ’s decision discussing Plaintiff’s subjective  
4 symptom testimony shows the following.

5           The ALJ began by reciting the relevant and familiar two-step analysis that an  
6 ALJ undertakes in assessing a claimant’s testimony regarding subjective pain or the  
7 intensity of symptoms: (1) the ALJ must determine whether there is an underlying  
8 impairment that could reasonably be expected to produce the pain or other  
9 symptoms alleged; and (2) if so, the ALJ must “evaluate the intensity, persistence,  
10 and limiting effects of [Plaintiff’s] symptoms to determine the extent to which they  
11 limit [Plaintiff’s] functioning.” AR 32; *see also Treichler v. Comm’r of Soc. Sec.*  
12 *Admin.*, 775 F.3d 1090, 1102 (9th Cir. 2014) (In assessing the credibility of a  
13 claimant’s symptom testimony, “[f]irst, the ALJ must determine whether the  
14 claimant has presented objective medical evidence of an underlying impairment  
15 which could reasonably be expected to produce the pain or other symptoms  
16 alleged;” if so, and if the ALJ does not find evidence of malingering, the ALJ must  
17 provide “specific, clear and convincing reasons for rejecting a claimant’s testimony  
18 regarding the severity of the claimant’s symptoms”).

19           After reciting this two-step analysis, the ALJ summarized some, but notably  
20 not all, of Plaintiff’s symptom testimony. AR 32-33. As Plaintiff highlights, the  
21 ALJ did not include in his summary a description of Plaintiff’s fatigue symptoms or  
22 his need for naps. Joint Stipulation (“JS”) at 7. After summarizing Plaintiff’s  
23 symptoms, the ALJ next discussed the medical assessments and reports of the  
24 medical expert and the consultative examiner. AR 34. Then, in a conclusory  
25 fashion, the ALJ stated, “Altogether, the weight of the medical opinion, as well as  
26 the subjective complaints from [Plaintiff] and his wife, are credited to the extent  
27 that [Plaintiff] is found to have had a residual functional capacity” consistent with  
28 the residual functional capacity assessed by the ALJ in his decision. AR 34.

1 It is well settled that in assessing the credibility of a claimant's symptom  
2 testimony, the ALJ must identify what testimony was found not credible and  
3 explain what evidence undermines that testimony. *Holohan v. Massanari*, 246 F.3d  
4 1195, 1208 (9th Cir. 2001). "General findings are insufficient." *Lester v. Chater*,  
5 81 F.3d 821, 834 (9th Cir. 1995).

6 On this record, the Court cannot determine on what ground(s) the ALJ  
7 discounted Plaintiff's subjective symptom testimony. Because no malingering  
8 allegation was made, the ALJ's reasons must be "clear and convincing." *Treichler*,  
9 775 F.3d at 1102. The Commissioner makes several arguments in support of the  
10 ALJ's findings. But as Plaintiff correctly points out, the ALJ never articulated  
11 these reasons, and this Court cannot affirm on grounds on which the ALJ did not  
12 rely. *See Orn v. Astrue*, 495 F.3d 625, 630 (9th Cir. 2007).

13 Accordingly, the Court concludes that the ALJ did not give clear and  
14 convincing reasons, supported by substantial evidence, for discounting Plaintiff's  
15 subjective symptom testimony.

## 16 **2. Remand for Further Administrative Proceedings**

17 Because further administrative review could remedy the ALJ's errors,  
18 remand for further administrative proceedings, rather than an award of benefits, is  
19 warranted here. *See Brown-Hunter v. Colvin*, 806 F.3d 487, 495 (9th Cir. 2015)  
20 (remanding for an award of benefits is appropriate in rare circumstances). Before  
21 ordering remand for an award of benefits, three requirements must be met: (1) the  
22 Court must conclude that the ALJ failed to provide legally sufficient reasons for  
23 rejecting evidence; (2) the Court must conclude that the record has been fully  
24 developed and further administrative proceedings would serve no useful purpose;  
25 and (3) the Court must conclude that if the improperly discredited evidence were  
26 credited as true, the ALJ would be required to find the claimant disabled on  
27 remand. *Id.* (citations omitted). Even if all three requirements are met, the Court  
28 retains flexibility to remand for further proceedings "when the record as a whole

1 creates serious doubt as to whether the claimant is, in fact, disabled within the  
2 meaning of the Social Security Act.” *Id.* (citation omitted).

3 Here, remand for further administrative proceedings is appropriate. The  
4 Court finds that the ALJ failed to provide clear and convincing reasons supported  
5 by substantial evidence to discount Plaintiff’s subjective symptom testimony.

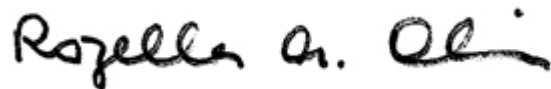
6 On remand, the ALJ shall reassess Plaintiff’s subjective allegations in light of  
7 Social Security Ruling 16-3p – Evaluation of Symptoms in Disability Claims,  
8 *available at* 2016 WL 1119029 (Mar. 16, 2016), which would apply upon remand.  
9 The ALJ shall then reassess Plaintiff’s residual functional capacity in light of the  
10 reassessment of Plaintiff’s subjective allegations and proceed through steps four  
11 and five to determine what work, if any, Plaintiff is capable of performing.

12 **3. Conclusion**

13 IT IS ORDERED that Judgment shall be entered REVERSING the decision  
14 of the Commissioner denying benefits, and REMANDING the matter for further  
15 proceedings consistent with this Order.

16 IT IS FURTHER ORDERED that the Clerk of the Court serve copies of this  
17 Order and the Judgment on counsel for both parties.

18  
19 DATED: November 30, 2017



20 ROZELLA A. OLIVER  
21 UNITED STATES MAGISTRATE JUDGE

22  
23 **NOTICE**

24 **THIS DECISION IS NOT INTENDED FOR PUBLICATION IN WESTLAW,  
25 LEXIS/NEXIS, OR ANY OTHER LEGAL DATABASE.**